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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

10/598,208

**Applicant(s)**BROEKSTEEG, GERARDUS  
HENRICUS**Examiner**

Alexander Q. Huerta

**Art Unit**

2427

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 21 November 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 August 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-21 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claim(s) 21 is/are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled "Clarification of 'Processes' under 35 U.S.C. 101"). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1, 3, 7-11, 13, 17-21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Goto et al. (US Pat. **7,218,837**) in view of West et al. (US Pub. **2003/0110514**), herein referenced as Goto and West, respectively.

Regarding **claim 1**, Goto discloses "a method of displaying a video signal comprising the steps of: retrieving the video signal: generating a graphical display including a bar (on-screen Information) extending in a predetermined direction and divided into at least two program sections... inserting the graphical display into the video signal; and outputting the video signal" (Col. 16 lines 35-43, Col. 16 line 59-Col. 18 line 8, Figs. 6-8).

Goto fails to explicitly disclose that "the sections defined by markers, wherein at least one of the markers is capable of indicating when a user changes a channel prior to conclusion of a program."

West discloses that "the sections defined by markers, wherein at least one of the markers is capable of indicating when a user changes a channel prior to conclusion of a program." ([0109], [0111]-[0112], Figs. 11A-B, 12-15, i.e. West discloses a progress bar which displays a surfed channel that user recently watched. For example, the first portion 1230 of the progress bar represents the portion of MCI 4 that is stored in the buffer. The second portion 1232 represents unavailable content indicating that the user stopped watching midway through). Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of defining sections with markers

indicating when a user changes a channel prior to conclusion of a program as taught by West, to improve the graphical display bar system of Goto for the predictable result of enabling user to clearly identify which portions of a program they have buffered when channel surfing.

Regarding **claim 3**, Goto discloses that "the markers correspond to either a program change or a channel change" (Col. 28 line 47-Col. 29 line14, Fig. 8).

Regarding **claim 7**, Goto fails to explicitly disclose that "at least one of the program sections is color coded to indicate no signal available at time of recording."

West discloses that "at least one of the program sections is color coded to indicate no signal available at time of recording." ([0112], Figs. 11A-B, 12-15, i.e. second portion 1232 indicates what portion of the current media instance is unavailable when it was recorded). Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of color coding program sections that are unavailable as taught by West, to improve the graphical display bar system of Goto for the predictable result of enabling user to clearly identify which portions of a program they have buffered when channel surfing.

Regarding **claim 8**, Goto discloses that "the graphical display further includes a program pointer (playback position mark B)" (Col. 8 lines 6-10, Figs. 4, 6).

Regarding **claim 9**, Goto discloses that "the graphical display further includes a start time graphic and an end time graphic" (Col. 11 lines 25, Figs. 3-8, i.e. the colored portion "G" represents the cached portion of the program and the beginning and ending points designate at what the program will begin and end).

Regarding **claim 10**, Goto discloses that “the graphical display further includes an in flow animation (Col. 14 lines 37-42, Figs. 3-6, 8, i.e. the colored portion “G” of bar “E” represents the cached portion and will increase as the cache fills signifying in flow of data) and an out flow animation” (Col. 14 lines 32-36, Figs. 4, 6, i.e. the playback position “B” will slide along the bar indicating to the user they are using up data in the cache representing an out flow).

Regarding **claim 11**, Goto discloses “a personal video recording device (Fig. 7), comprising: a buffer for storing a video signal (Col. 16 lines 35-43); an audio and video coding unit for retrieving and decoding the video signal (Col. 16 lines 1-14, Fig. 7 El. 101), generating a graphical display including a bar extending in a predetermined direction and dividing the bar into at least two program sections... (Col. 16 line 59-64, Fig. 6, i.e. the playback marker “B” divides the bar into two program sections), inserting the graphical display into the video signal (Col. 16 line 59-64); and a switch for outputting the video signal” (Col. 17 lines 5-8, Col. 19 lines 16-21, Fig. 7 El. 108).

Goto fails to explicitly disclose that “the sections defined by markers, wherein at least one of the markers is capable of indicating when a user changes a channel prior to conclusion of a program.”

West discloses that “the sections defined by markers, wherein at least one of the markers is capable of indicating when a user changes a channel prior to conclusion of a program.” ([0109], [0111]-[0112], Figs. 11A-B, 12-15, i.e. West discloses a progress bar which displays a surfed channel that user recently watched. For example, the first portion 1230 of the progress bar represents the portion of MCI 4 that is stored in the

buffer. The second portion 1232 represents unavailable content indicating that the user stopped watching midway through). Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of defining sections with markers indicating when a user changes a channel prior to conclusion of a program as taught by West, to improve the graphical display bar system of Goto for the predictable result of enabling user to clearly identify which portions of a program they have buffered when channel surfing.

Regarding **claims 13, 17-20**, claims 13, 17-20 are interpreted and thus rejected for the reasons set forth above in the rejection of claims 3, 7-10. Claims 3, 7-10 describe a method of displaying a video signal and claims 13, 17-20 describe a personal video recording device implementing the method. Thus, claims 13, 17-20 are rejected.

Regarding **claim 21** Goto discloses "a graphical display for a personal recording device, comprising: a bar (bar "E") extending in a predetermined direction [Col. 28 lines 47-61, Col. 29 lines 5-14, Figs. 3-6, 8]; markers dividing the bar into at least two program sections... [Col. 16 line 59-64, Fig. 6, i.e. the playback marker "B" divides the bar into two program sections], and a program pointer" [Col. 8 lines 6-10, Figs. 4, 6].

Goto fails to explicitly disclose that "the sections defined by markers, wherein at least one of the markers is capable of indicating when a user changes channel prior conclusion of a program."

West discloses that "the sections defined by markers, wherein at least one of the markers is capable of indicating when a user changes channel prior conclusion of a

program.” ([0109], [0111]-[0112], Figs. 11A-B, 12-15, i.e. West discloses a progress bar which displays a surfed channel that user recently watched. For example, the first portion 1230 of the progress bar represents the portion of MCI 4 that is stored in the buffer. The second portion 1232 represents unavailable content indicating that the user stopped watching midway through). Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of defining sections with markers indicating when a user changes a channel prior to conclusion of a program as taught by West, to improve the graphical display bar system of Goto for the predictable result of enabling user to clearly identify which portions of a program they have buffered when channel surfing.

**Claims 2, 12** are rejected under 35 U.S.C. 103(a) as being unpatentable over Goto in view of West and in further view of Eldering et al. (US Pub. **2007/0240181**), herein referenced as Eldering.

Regarding **claim 2**, Goto discloses that “the program sections defined by the markers...” [Col. 28 line 47-Col. 29 line 14, Fig. 8], however Goto fails to explicitly disclose that the “program sections ...may be less than 120 seconds.”

West discloses a progress bar in which buffered portions of programs are displayed on the progress bar when the user is channel surfing ([0109], [0111]-[0112], Figs. 11A-B, 12-15), however the combination still fails to explicitly disclose that the “program sections ...may be less than 120 seconds.” Thus, it would have been obvious to one of ordinary skill in the art to apply the technique of defining sections with markers



indicating when a user changes a channel prior to conclusion of a program as taught by West, to improve the graphical display bar system of Goto for the predictable result of enabling user to clearly identify which portions of a program they have buffered when channel surfing.

Eldering discloses that channel surfing activity generally involves when a subscribers selects a channel and views the contents of a program for about 3-4 seconds and then changes to a new channel [0010], therefore Eldering meets the limitation that the "program sections may be less than 120 seconds." Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the combination of Goto and West by specifically providing program sections that may be less than 120 seconds, as taught by Eldering, for the purpose of allowing uses to retrieve buffered programs at a later time even if they were channel surfing so that surfed programs are not excluded from the buffer.

Regarding **claim 12**, claim 3 is interpreted and thus rejected for the reasons set forth above in the rejection of claim 2.

**Claims 4, 6, 14, 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Goto in view of West and in further view of Plourde, Jr. et al. (US Pat. **7,218,839**), herein referenced as Plourde.

Regarding **claim 4**, Goto discloses that the on-screen information (bar "E") displays genre markers (Col. 28 lines 47-61, Col. 29 lines 5-14, Fig. 8), however neither

Goto nor West explicitly disclose that "the program sections are color coded to indicate genre of a program".

Plourde discloses that it is well known to color code different themed programs in the IPG, which reads on claimed "program sections are color coded to indicate genre of a program" (Col. 1 lines 35-44). Thus, it would have been obvious to one ordinary skill in the art to apply the technique of color coding different genres of programs as taught by Plourde, to improve the on-screen information system of Goto, for the predictable result of providing the user with a visual indication of the of the theme of the program without the need to look up the program information.

Regarding **claim 6**, neither Goto nor West disclose that "at least one of the program sections is color coded to indicate a program is to be saved".

Plourde discloses that "at least one of the program sections is color coded to indicate a program is to be saved" (Col. 8 lines 19-24, Col. 9 lines 49-60, Figs. 4-5). Thus, it would have been obvious to one ordinary skill in the art to apply the technique of color coding programs to be recorded as taught by Plourde, to improve the on-screen information system of Goto, for the predictable result of providing the user with a visual indication of future programs that are set to be recorded so that they may adjust recording schedules to avoid recording conflicts.

Regarding **claims 14, 16**, claims 14, 16 are interpreted and thus rejected for the reasons set forth above in the rejection of claims 4, 6. Claims 4, 6 describe a method of displaying a video signal and claims 14,16 describe a personal video recording device implementing the method. Thus, claims 14, 16 are rejected.

**Claims 5, 15** are rejected under 35 U.S.C. 103(a) as being unpatentable over Goto in view of West and in further view of Needham et al. (US Pub. **2003/0177495**), herein referenced as Needham.

Regarding **claim 5**, Goto discloses on-screen information [Col. 9 lines 28-34, Figs. 3-7, 8, i.e. bar "E"], however neither Goto nor West disclose "at least one of the program sections is color coded to indicate a program is copy-protected".

Needham discloses "at least one of the program sections is color coded to indicate a program is copy-protected" [0025]. Thus, it would have been obvious to one ordinary skill in the art to apply the technique of color coding copyright protected programs as taught by Needham, to improve the on-screen information system of Goto, for the predictable result of informing the user that they are unable to download certain programs due to copyright restrictions.

Regarding **claim 15**, claim 15 is interpreted and thus rejected for the reasons set forth above in the rejection of claim 5. Claim 5 describes a method of displaying a video signal and claim 15 describes a personal video recording device implementing the method. Thus, claim 15 is rejected.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Q. Huerta whose telephone number is (571) 270-3582. The examiner can normally be reached on M-F(Alternate Fridays Off) 7:30-5:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Beliveau can be reached on (571) 272-7343. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Alexander Q Huerta  
Examiner  
Art Unit 2427

February 13, 2009

/Scott Beliveau/  
Supervisory Patent Examiner, Art Unit 2427